

1 WILLIAM SLOAN COATS (State Bar No. 94864)
2 VICKIE L. FEEMAN (State Bar No. 177487)
3 MARK R. WEINSTEIN (State Bar No. 193043)
4 RORY G. BENS (State Bar No. 201674)
5 ORRICK, HERRINGTON & SUTCLIFFE LLP
6 1000 Marsh Road
7 Menlo Park, CA 94025
8 Telephone: (650) 614-7400
9 Facsimile: (650) 614-7401

10 Attorneys for Defendants
11 Connectix Corporation and Microsoft Corporation

12 Isabella Fu (State Bar No. 154677)
13 MICROSOFT CORPORATION
14 One Microsoft Way
15 Redmond, WA 98052
16 Telephone: (425) 722-4846
17 Facsimile: (425) 936-7329

18 Attorney for Defendant Microsoft Corporation

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN JOSE DIVISION

22 VMWARE, INC,

23 Plaintiff,

24 v.

25 CONNECTIX CORPORATION,
26 MICROSOFT CORPORATION,

27 Defendants.

CASE NO: C 03-00654 JW

**DEFENDANTS' ANSWER TO FIRST
AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

1 Defendants Connectix Corporation (“Connectix”) and Microsoft Corporation
2 (“Microsoft”) hereby answer the First Amended Complaint of plaintiff VMware, Inc.
3 (“VMware”) as follows:

4 **The Parties**

5 1. Connectix and Microsoft lack sufficient information to admit or deny and
6 on that basis deny the allegations of Paragraph 1 of the First Amended Complaint.

7 2. Connectix and Microsoft admit the allegations of Paragraph 2 of the First
8 Amended Complaint.

9 3. Connectix and Microsoft admit the allegations of Paragraph 3 of the First
10 Amended Complaint.

11 **Jurisdiction and Venue**

12 4. Connectix and Microsoft admit that the First Amended Complaint purports
13 to state a cause of action over which this Court has subject matter jurisdiction under 28 U.S.C. §
14 1338(a) because it contains a claim for patent infringement. Connectix and Microsoft deny any
15 and all remaining allegations of Paragraph 4 of the First Amended Complaint.

16 5. Connectix and Microsoft admit that Connectix is a California corporation
17 with its principal place of business in the Northern District of California. Connectix and
18 Microsoft deny any and all remaining allegations of Paragraph 5 of the First Amended Complaint.

19 6. Connectix and Microsoft admit that Microsoft conducts business in
20 California. Connectix and Microsoft deny any and all remaining allegations of Paragraph 6 of the
21 First Amended Complaint.

22 7. Connectix and Microsoft admit, for purposes of this action only, that venue
23 is proper in this judicial district. Connectix and Microsoft deny any and all remaining allegations
24 of Paragraph 7 of the First Amended Complaint.

25 **Background Facts**

26 8. Connectix and Microsoft admit that VMware states that it is in the business
27 of providing virtual machine software for IBM PC and compatible computers and servers.

1 Connectix and Microsoft deny any and all remaining allegations of Paragraph 8 of the First
2 Amended Complaint.

3 9. Connectix and Microsoft admit that Connectix is in the business of
4 providing virtual machine software for personal computers and servers. Connectix and Microsoft
5 deny any and all remaining allegations of Paragraph 9 of the First Amended Complaint.

6 10. Connectix and Microsoft admit that Microsoft is in the business of
7 providing operating system software for IBM PC and compatible computers and servers.
8 Connectix and Microsoft admit that Microsoft announced an acquisition the assets of the virtual
9 machine solutions of Connectix on February 19, 2003. Connectix and Microsoft deny any and all
10 remaining allegations of Paragraph 10 of the First Amended Complaint.

11 **Cause of Action of Alleged Patent Infringement**

12 11. Connectix and Microsoft incorporate their answers to Paragraphs 1 through
13 10 of the First Amended Complaint as if set forth fully herein.

14 12. Connectix and Microsoft admit that on its face U.S. Patent No. 6,496,847
15 B1 ("the '847 Patent") indicates it issued on December 17, 2002 to VMware, Inc. Connectix and
16 Microsoft deny any and all remaining allegations of Paragraph 12 of the First Amended
17 Complaint.

18 13. Connectix and Microsoft deny each and every allegation of Paragraph 13
19 of the First Amended Complaint.

20 14. Connectix and Microsoft deny each and every allegation of Paragraph 14
21 of the First Amended Complaint.

22 15. Connectix and Microsoft deny each and every allegation of Paragraph 15
23 of the First Amended Complaint.

24 16. Connectix and Microsoft deny each and every allegation of Paragraph 16
25 of the First Amended Complaint.

26 17. Connectix and Microsoft deny each and every allegation of Paragraph 17
27 of the First Amended Complaint.

1 **AFFIRMATIVE DEFENSES**

2 **First Affirmative Defense: Non-Infringement**

3 Connectix and Microsoft do not willfully or otherwise infringe, contribute to the
4 infringement of, or actively induce others to infringe, any claim of the '847 Patent.

5 **Second Affirmative Defense: Invalidity/Unenforceability**

6 Each claim of the '847 Patent is invalid and/or unenforceable for failure to meet one
7 or more of the conditions of patentability specified in 35 U.S.C. §§ 101, 102, 103, and/or 112.

8 **Third Affirmative Defense: Estoppel**

9 As a result of the proceedings before the United States Patent and Trademark
10 Office during the prosecution of the applications for the Patents-at-issue, specifically the
11 admissions, representations, and amendments made on behalf of the applicants for such patents,
12 VMware is estopped from asserting any construction of the claims of the '847 Patent that covers
13 any activity engaged in or product sold by Connectix or Microsoft.

14 **Fourth Affirmative Defense: Standing**

15 Connectix and Microsoft allege on information and belief that VMware lacks
16 standing to bring the claims and/or requests for relief contained in its First Amended Complaint.

17 **Fifth Affirmative Defense: Unavailability of Relief**

18 VMware has failed to plead and meet the requirements of 35 U.S.C. § 271(b) and
19 is not entitled to any alleged damages prior to providing any actual notice to Connectix and
20 Microsoft of the '847 Patent.

21 **Sixth Affirmative Defense: Inequitable Conduct**

22 The '847 Patent is unenforceable due to inequitable conduct. During the second
23 half of 1997, one of the individuals listed as an inventor on the '847 Patent worked on a system
24 that embodied Claim 1 of the '847 Patent, and possibly other claims, while employed by an entity
25 other than VMware. Specifically, the system created by this individual included, among other
26 things, a virtual machine monitor (VMM) and a host operating system (HOS) at the system level,
27 which VMware claimed was an inventive feature distinguishing Claim 1 over the prior art.

1 VMware did not disclose this individual's prior work to the Patent and Trademark Office in
 2 connection with its efforts to obtain the '847 Patent. On information and belief, VMware
 3 deliberately concealed this material information to hide the other entity's potential ownership
 4 interest in the patent.

5 **Seventh Affirmative Defense: Failure to State a Claim**

6 The First Amended Complaint fails to state a claim upon which relief can be
 7 granted.

8 **WHEREFORE**, Connectix and Microsoft pray that the Court:

9 A. Enter judgment in favor of Connectix and Microsoft, and against VMware,
 10 thereby dismissing VMware's First Amended Complaint in its entirety, with prejudice, VMware
 11 to take nothing by way of its claims;

12 B. Find that each of the claims of the '847 Patent are not infringed by any
 13 actions of Connectix and Microsoft, or any of their customers, suppliers, users, licensees, vendors
 14 or vendees, or others using its products either alone or in combination with any other product;

15 C. Find that the '847 Patent is invalid and unenforceable;

16 D. Deny each and every VMware request for injunctive relief;

17 E. Order VMware to pay the costs and reasonable attorney's fees incurred by
 18 Connectix and Microsoft in responding to this action pursuant to 35 U.S.C. §§ 284 and 285; and

19 F. Grant Connectix and Microsoft such other and further relief as this Court
 20 deems just and warranted under the circumstances.

21 **JURY DEMAND**

22 Connectix and Microsoft demand a trial by jury as to all issues so triable.

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2 Dated: March 6, 2003.

Respectfully submitted,

3 WILLIAM SLOAN COATS
4 VICKIE L. FEEMAN
5 MARK R. WEINSTEIN
6 RORY G. BENS
7 ORRICK, HERRINGTON & SUTCLIFFE LLP

8 /s/ Rory G. Bens /s/ for

Vickie L. Feeman
Attorneys for Defendants

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